

## **REMARKS/ARGUMENTS**

Reexamination of the captioned application is respectfully requested.

### **A. SUMMARY OF THIS AMENDMENT**

By the current amendment, Applicants basically:

1. Amend claims 1, 19, 51, 55, 59, 62, and 70.
2. Add new claims 71 – 77.
3. Respectfully traverse all prior art rejections.

### **B. THE PRIOR ART REJECTIONS**

Claims 1-61 stand rejected under 35 USC §103(a) as being unpatentable over U.S. Patent 5,732,076 to Ketseoglou et al in view of U.S. Publication 2003/0031143 to Faerver.

### **C. THE CLAIM AMENDMENTS AND NEW CLAIMS**

Independent claims 1, 19, 59, 62, and 70 have been amended to recite that the first communication resources and the second communication resources at least partially share a common frequency range. Similarly, independent claims 51 and 55 have been amended to require that the first frame structure and the second frame structure at least partially share a common frequency range. Such amendments are supported, e.g., by ¶[0008], ¶[0072], ¶[0106], and ¶[0108] as well as Fig. 18 of applicants' published patent application.

New dependent claims 71 - 77, dependent upon claims 1, 19, 51, 55, 59, 62, and 70, respectively specify that the data of the second communications is transmitted essentially only in transmission gaps of the second communications standard type. Such is evident from and supported, e.g., by Figs. 10 – 11, 17, 25 – 28.

The independent claims which the office action alleges to be non-statutory have been amended to include use of a computer, thereby mooting the rejections under 35 USC §101.

#### **D. THE CLAIMS ARE STATUTORY**

Claims 38 and 39 have been amended to recite, e.g., non-transitory computer readable storage medium or in a non-transitory computer readable storage device. In view of Under Secretary Kappos' January 26, 2010 directing regarding Subject Matter Eligibility of Computer Readable Media, the rejections under 35 USC §101 are deemed overcome, e.g., by the present amendment.

The independent claims which the office action alleges to be non-statutory have been amended to include use of a computer, thereby mooting the rejections under 35 USC §101.

#### **E. PATENTABILITY OF THE CLAIMS**

All prior art rejections are respectfully traversed for at least the following reasons.

The office action correctly admits that US Patent 5,732,076 to Ketseoglou does not disclose "using the at least one transmission gap (TG) for communications according to the second communications standard for transmitting data of the second communications in the at least one transmission gap". US Patent 5,732,076 to Ketseoglou aims to provide a composite time frame that is of a duration sufficient to fit an integral number of both the first and second time frames from which the composite time frame is derived" (col. 23, lines 63 *et. seq*). In conjunction with the embodiment of Fig. 26 (cited by the office action), US Patent 5,732,076 to Ketseoglou admits that there may be a situation in which time gaps may have to be inserted into his composite so that

two of the second time frames have the same duration as a single first time frame (see, e.g., col. 24, lines 6 *et. seq*). But US Patent 5,732,076 to Ketseoglou clearly states that the use of time gaps is disfavored and wasteful.

To remedy the deficiency of US Patent 5,732,076 to Ketseoglou the office action turns to US Patent Publication 2003/0031143 to Faerber. The office action particularly cites a portion (paragraphs [0027] – [0029] of Faerber which deals with transmission gaps being used for performing RSSI measurements and decoding. However, as explained beginning with Faerber paragraphs [0009], the transmission gaps referenced by Faerber are interludes that occur when a transmitter stops transmitting (when in a compressed mode) so that the unit to which the transmitter belongs can listen to another frequency and make the necessary measurements with respect to the other frequency. As stated in Faerber paragraphs [0011], the “subscriber station can tune the receiving device to another frequency band and receive and evaluate signals transmitted therein”.

The signals upon which RSSI measurements are performed are signals from another unit (e.g., another base station, e.g., a listened-to base station). There is no constraint that such signals listened to for RSSI measurements be sent by the listened-to base station only during the transmission gaps of a protocol of the listening base station. In fact, the listened-to base station is oblivious to the protocol and thus the frame structure of the listening base station. The signals of the type listened to by the listening base station are sent by the listened-to station in manner utterly uncoordinated with the listening station. Thus, Faerber’s listening (for RSSI measurement purposes) during a gap cannot teach or suggest the requirements of applicants’ independent claims that, e.g., a number of slots or frames of a second frame structure of the second communications standard type is dependent upon the number and the duration of the at least one transmission gap of the first frame structure.

U.S. Publication 2003/0031143 to Faerver inserts transmission pauses, so-called transmission gaps, into the continuous data transmission of a FDD system in order to receive and evaluate the synchronization channel of a GSM system. The transmission pauses are generated by a reduction of spreading factor or by puncturing. It is clear, however, that Faerver contemplates that the parallel mobile communications systems (TDD and GSM) operate in a different frequency band. See, e.g., Faerver ¶[0009], ¶[0011] (last two sentences), and ¶[0037] (last sentence). As such, Faerver does not meet the requirement of all independent claims that the first communication resources and the second communication resources at least partially share a common frequency range. If the office action contends that U.S. Patent 5,732,076 to Ketseoglou teaches two system operating in a same frequency range, the person skilled in the art would not look to Faerver for a teaching of accommodating systems of a same frequency range.

Moreover, the fact that the Faerver gap is used only for control signals (e.g., RSSI as alleged by the office action) prevent Faerver from teaching or suggesting the subject matter of new dependent claims 71 – 77, e.g., that the data of the second communications is transmitted essentially only in transmission gaps of the second communications standard type.

## **F. MISCELLANEOUS**

In view of the foregoing and other considerations, all claims are deemed in condition for allowance. A formal indication of allowability is earnestly solicited.

The Commissioner is authorized to charge the undersigned's deposit account #14-1140 in whatever amount is necessary for entry of these papers and the continued pendency of the captioned application.

Should the Examiner feel that an interview with the undersigned would facilitate allowance of this application, the Examiner is encouraged to contact the undersigned.

Respectfully submitted,  
**NIXON & VANDERHYE P.C.**

By: /H. Warren Burnam, Jr./

H. Warren Burnam, Jr.  
Reg. No. 29,366

HWB:lsh  
901 North Glebe Road, 11th Floor  
Arlington, VA 22203-1808  
Telephone: (703) 816-4000  
Facsimile: (703) 816-4100